FILED

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. 454.

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA, Petitioner,

vs.

CHAS. S. MITCHELL, W. H. RICHARDSON, TRUCKERS SUPPLY COMPANY, and SOUTH CAROLINA AGRICULTURE CREDIT COMPANY, Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

BRIEF FOR PETITIONER.

S. E. WEAVER,
Solicitor for Petitioner,
S. W. Sanders,
Attorneys for Petitioner.

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This action was commenced by the Federal Intermediate Credit Bank of Columbia, which is situated in the Eastern District of South Carolina against the defendants named in the title, each and all of whom are citizens and residents of the same District, on several promissory notes, involving more than three thousand ($3,000.00) dollars. (R. 2-6).

The defendant, C. S. Mitchell (the other defendants not appearing), answered admitting plaintiff's incorporation under Act of Congress of 1923, the residence of the parties and the amount in controversy. (R. 8-9).

And for a further answer, pp. 9-10, par. 12, denies the jurisdiction of the District Court. And this question was decided by both the lower courts adverse to our claim.

ISSUE.

The only question involved in this case is whether or not the United States District Court has jurisdiction of an action brought by a Federal Intermediate Credit Bank, where the requisite amount is involved, solely by reason of the fact that the Bank is chartered and incorporated under an Act of Congress and its capital stock is furnished and owned entirely by the United States Government. Assignment of Errors 1 and 2 (R. 32-3).

SUMMARY.

The decision in this case turns upon the construction of Section 201-(c) of the Act creating the Federal Intermediate Credit Banks, enacted in 1923, 42 Stat. L. 1454; U. S. C., Title 12, Sec. 1023, which reads:

> Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of **jurisdiction** shall be deemed **a citizen of the State where** it is **located.**

Our position is:

I. That the latter clause of the paragraph means when **jurisdiction** in any Court (State or Federal) is **dependent** on **citizenship,** then the **citizenship (residence)** is to be the State in which the bank is **located.** It has **nothing whatever to do with that clause** of the statute providing for jurisdiction in the Federal Court where the **cause of action arises under a Federal law.**

II. The Act of 1925, 43 Stat. L. 941, U. S. C., Title 28, Section 42, amending the Judicial Code and taking away jurisdiction from the Federal Courts of corporations created by Acts of Congress, saving and excepting corporations in which the Government owns more than fifty per cent. of the stock, and section 13 of the same act repealing "all other Acts and parts of Acts in so far as they are embraced within and superseded by this Act or are inconsistent therewith," is entirely consistent with this construction, and not with any other; and leaves this purely Federal institution with the right to invoke and use the Federal Courts in the enforcement and protection of its rights—a right which may be of the greatest value at times.

ARGUMENT.

I.

The Federal Farm Loan Act was enacted July 17, 1916, 39 Stat. L. 360, U. S. C., Title 12, Sec. 641, etc., and under this Act twelve Farm Land Banks were established in different parts of the United States.

The Act was amended in 1923 so as to provide for Federal Intermediate Credit Banks located with and under the same management as the several Land Banks, 42 Stat. L. 1454, etc., U. S. C., Title 12, Sec. 1021, etc., and under Sect. 205 of the Act (U. S. C., Title 12, Sect. 1061) the

capital stock of each such bank is fixed at five million ($5,000,000.00) Dollars **"and shall be subscribed, held and paid for by the Government of the United States."**

The Federal Intermediate Credit Bank of Columbia, S. C., was established and located there for, and serves, the States of North Carolina, South Carolina, Georgia and Florida.

1. We respectfully submit that both of the Courts below attached too much importance to the words in the Act of 1923, "be deemed a citizen of the State," and in tracing the similarity of this language to similar words in the Statutes pertaining to National Banks, (and excluding jurisdiction of such banks, because of their Federal incorporation), and the construction put upon these National Bank Acts in *Hermann vs. Edwards*, as will be seen below under our argument at pp. 9-12; and in ignoring the line of authorities and reasoning of this Court in reference to jurisdiction of Federal Reserve Banks which were more closely akin to the Federal Intermediate Credit Banks, and more applicable to our Case.

2. **General Rule**. From the earliest times this Court has held that Congress could vest jurisdiction in its Courts of and over any corporation which was created by it, upon the ground that any action by or against it was one arising under the laws of the United States; and in 1875 Congress passed a general act making this a subject for Federal jurisdiction. Since that time this has been the uniform construction, "save where the particular suit was withdrawn or excluded from that jurisdicton by some **specific enactment."** Rose's Fed. Jurisdiction & Procedure, 3rd ed. p. 235, Sect. 238; Simpkins Fed. Practice (Rev. Ed.) p. 401; *Osborne vs. Bank*, 9 Wheat. 805, 808, 819, 822-3; 6 L. Ed. 220, 224, and cases in Rose's Notes, pp. 149, 169; *Bankers Trust Co. vs. Tex. & P. R. Co.*, 241 U. S. 306-7; 60 L. Ed. 1014-15; *Amer. Bank & Trust Co. vs.*

Federal Reserve Bank, 256 U. S. 356-7:65 L. Ed. 989; *Petri vs. Commercial Natl. Bk.* 148 U. S. 648:35 L. Ed. 1144; *Toledo Fence & Post Co. vs. Lyons*, 290 F. 641-4 (6th C. C. A.); *Sowell vs. Fed. Reserve Bank*, 268 U. S. 453-6:69 L. Ed. 1047-9. Judicial code, Sec. 24, and (a) under first sub-section, now U. S. C. Title 28, Sec. 41 (1), (a).

And the same rule and the same law applies where a subsidiary corporation is chartered by another which derived its authority to act as a corporation and to charter the subsidiary from an Act of Congress. *Rosenberg vs. U. S. Shipping Board Emergency Fleet Corp.*, 271 Fed. 956.

We ask the Court's attention to the following language of Mr. Justice Holmes in *American Bank & Trust Co. vs. Federal Reserve Bank*, cited above:

> We agree with the Court below that the removal was proper. The principal defendant was incorporated under the laws of the United States, and that has been established as a ground of jurisdiction since *Osborne vs. Bank of United States*, 9 Wheat. 738, 6 L. Ed. 204; Pacific R. Removal Cases, 115 U. S. 1, 29 L. Ed. 319, 5 Sup. Ct. Rep. 1113; *Re Dunn*, 212 U. S. 374, 53 L. Ed. 558, 29 Sup. Ct. Rep. 299. We shall say but a word in answer to the appellant's argument that a suit against such a corporation is not a suit arising under those laws, within Sect. 24 of the Judicial Code of March 3, 1911, chap. 231, 36 Stat. of L. 1087, Comp. Stat. 99 (2), 4 Fed. Stat. Anno. 2d. ed. p. 838. The contrary is established, and the accepted doctrine is intelligible, at least, since it is part of the plaintiffs' case that the defendant bank existed and exists as an entity, capable of committing the wrong alleged, and of being sued. These facts depend upon the laws of the United States. *Bankers Trust Co. vs. Texas & P. R. Co.*, 241 U. S. 295, 306, 307, 60 L. Ed. 1010, 1014, 1015, 36 Sup. Ct. Rep. 569; *Texas & P. R. Co. vs. Cody*, 166 U. S. 606, 41 L. Ed. 1132, 17 Sup. Ct. Rep. 703, 1 Am. Neg. Rep. 763. See further *Smith*

> *vs. Kansas City Title & T. Co.*, February 28, 1921 (255 U. S. 180, ante, 577, 41 Sup. Ct. Rep. 243.) A more plausible objection is that by the Judicial Code. Sect. 24, sixteenth, except as therein excepted, national banking associations for the purpose of suits against them, are to be deemed citizens of the states in which they are respectively located. But we agree with the court below that **the reasons for localizing ordinary commercial banks do not apply to the Federal reserve banks created after the Judicial Code was enacted, and that the phrase, "National Banking Associations" does not reach forward and include them.** That phrase is used to describe the ordinary commercial banks, whereas the others are systematically called "Federal reserve banks." **We see no sufficient ground for supposing that Congress meant to open the questions that the other construction would raise.**

In the Sowell case one of the main questions was whether or not the clause of the judiciary Act, Sec. 24, first sub-section immediately after the clause (c) giving jurisdiction of actions between citizens of a state and foreign states, citizens or subjects, which prohibited any District Court from taking jurisdiction of an action on a note or other chose in action in favor of an assignee, where the said action could not have been brought in that Court if no assignment had been made, was applicable to a suit against Federal Reserve Bank. In this case the Court said:

> It is unquestioned that where the **sole ground of jurisdiction** is **diversity of citizenship,** such jurisdiction is excluded by the operation of this clause, and the question now presented is whether the clause has a like effect where the sole ground of jurisdiction is that the suit arises under the laws of the United States.

And after discussing the origin of this assignee clause tracing it back to the Act of ~~1879~~ 1789, says:

But the Bank does not sue in virtue of any right conferred by the Judiciary Act, but in virtue of the right conferred by its charter. It does not sue because the defendant is a citizen of a different state from any of its members, but because its charter confers upon it the right of suing its debtors in a circuit court of the United States. * * *

By the Act of (March 1), 1875, (18 Stat. at L., 336, Chap. 114. Comp. Stat. Sect. 3926), jurisdiction of the Federal courts was extended generally to all suits arising under the laws of the United States. Where such is the ground of jurisdiction, the assignee clause appears to us to be inapplicable, just as it had been held to be in cases in which the like jurisdiction was conferred by special corporate charter provisions, or where jurisdiction was given generally over suits brought by the United States.

The precise question seems not to have been expressly passed upon by this Court since the Act of 1875. It, however, was necessarily involved in *Wyman vs. Wallace*, 201, U. S. 230, 50 L. Ed. 738, 26 Sup. Ct. Rep. 495, in which the assignee clause would have defeated the jurisdiction attaching because of diversity of citizenship, but in which the jurisdiction was nevertheless upheld because the case was one arising under a law of the United States.

We think that a **reasonable interpretation of the language of the clause in the light of its history,** its obvious purpose at the time of its enactment, and judicial declarations as to its meaning and effect, and the fact that the provisions for jurisdiction generally over suits arising under the laws of the United States was enacted later, and without any exceptions, lead to the conclusion that it should be so applied **as not to limit jurisdiction arising from the nature of the subject-matter of the suit, as is the case in suits brought by or against corporations organized under the laws of the United States.**

3. **Exceptions.** A number of acts have been passed since the general statute of 1875, limiting the Federal jurisdiction and taking it away in various cases:

(1) As to National Banks:—Act of 1882, 22 Stat. L. 162-3, which reads, among other things: **"The jurisdiction for suits hereafter brought by or against** * * * National Banking Associations, **except suits between them and the United States** * * * shall be **the same as and not other than,** the jurisdiction for suits by or against banks **not organized under any laws of the United States.** * * *."

Act of 1888, 25 Stat. L. 436, provides "that all National Banking associations * * * **for the purposes of all other actions by or against them** * * * be deemed **citizens of the states** in which they are respectively **located; and in such case the Circuit and District Courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state."**

Then follows a proviso that it shall not affect the jurisdiction of the United States Courts in certain classes of cases.

Judicial Code, Sec. 24, Sub-sect. Sixteenth, U. S. C., Title 28, Section 41, Subd. (16), under the title "Suits Against National Banking Associations" confers upon the United States Courts jurisdiction of certain suits commenced by it or its officers against National Banks, and of certain suits by National Banks against the Comptroller, and then provides: "And all National Banking Associations established under the laws of the United States shall, **for the purposes of all other actions by or against them,** * * * **be deemed citizens of the states in which they are respectively located."**

(a) *Hermann vs. Edwards,* 238 U. S. 111-12, 113, 116-18:59 L. Ed. 1227-9.

The District Court and the Circuit Court of Appeals, in the majority opinion, relied largely upon the decision in this case in construing the statute before it. We submit

that a careful study of the Hermann case will show that it was based largely upon the explicit wording of the statutes of 1882 and 1888, just above quoted, and the interpretation which had been given to these statutes and had become a part of the fixed law in regard to National Banks. That the present case should be and can be differentiated from that.

And that the Courts in our case have failed to note the important difference between the wording of the Acts as to National Banks and that referring to jurisdiction in the Federal Intermediate Credit Bank Act.

The Hermann case was commenced in the Court below in March, 1913, pp. 113-14, and was decided in 1915. The Court considered the original Statutes of 1882 as not repealed, but as in fact still in force, constituting and to be construed with the Act of 1888 and the Judicial Code of 1911, each of the later Acts to be considered and construed with the earlier. The opinion was delivered by the late Chief Justice White and we call attention of the Court to the following language:

> Under the provisions of the Act of 1882, long prior to their re-enactment in 1888, it had been conclusively established that because a corporation was a national bank, created under an Act of Congress, gave it no greater right to remove a case than if it had been organized under a state law. *Leather Mfrs.' Nat. Bank vs. Cooper*, 120 U. S. 778, 30 L. Ed. 816, 7 Sup. Ct. Rep. 777. And after the **re-enactment in 1888** a case (*Whittemore vs. Amoskeag Nat. Bank*, 134 U. S. 527, 33 L. Ed. 1002, 10 Sup. Ct. Rep. 592) was decided involving a controversy controlled by the Act of 1882, but the decision of which was necessarily also an interpretation of the Act of 1888, as the two were identical. * * * The circuit court, not passing upon these questions, dismissed the bill because there had not been a compliance with equity rule 94. But this court concluding that the Act of 1882 excluded jurisdiction as a Federal Court, the action of the court below in

dismissing for want of compliance with the equity rule was reversed and the case remanded with directions to dismiss for want of jurisdiction as a Federal Court. Of course this conclusion involved deciding that, in the absence of a Federal controversy concerning the interpretation of some provision of the national bank act raising what might be considered by analogy a Federal question in the sense of §709, Rev. Stat., **a mere assertion of liability on the part of directors for wrongs for which they might be responsible at common law afforded no basis for jurisdiction.** * * *

This ruling during the many years which have elapsed has never been questioned and the fundamental principle upon which it rested has been applied in various aspects. *Petri vs. Commercial Nat. Bank*, 142 U. S. 644, 35 L. Ed. 1144, 12 Sup. Ct. Rep. 325; *Ex Parte Jones*, 164 U. S. 693, 41 L. Ed. 601, 17 Sup. Ct. Rep. 222; *Continental Nat. Bank vs. Buford*, 191 U. S. 119, 48 L. Ed. 119, 24 Sup. Ct. Rep 54; *Yates vs. Jones Nat. Bank*, 206 U. S. 158, 51 L. Ed. 1002, 27 Sup. Ct. Rep. 638; *Thomas vs. Taylor*, 224 U. S. 73, 56 L. Ed. 673, 32 Sup Ct. Rep. 403. * * *

The statutory law with the concluded interpretation affixed to it, to which we have referred, being in force, this suit was commenced in the Court below in March, 1913. * * *

It is apparent that the general statements made in the bill to the effect that Federal considerations were essential to the determination of the cause of action were but conclusions of law affording no jurisdiction apart from the right to entertain the cause which would arise from the substantive and essential facts upon which the bill was based. Indeed, when the averments of the bill are analyzed there is no escape from the conclusion that the **jurisdiction to entertain it could not have been exerted without disregarding the plain letter of the statute in force since 1882.** In fact, this inevitable result does not depend upon the mere text of the statutes referred to, since there is an absolute legal identity between this and the Whittemore Case, and that case hence forecloses every contention here relied upon. * * *

> In **re-enacting** these provisions of the Act of 1888 in paragraph 16, of Sec. 24 of the Judicial Code, obviously to make the **purpose of the re-enacted statute clearer,** just the opposite form of statement was resorted to, since paragraph 16 opens by conferring Federal jurisdiction only in those classes of cases which were kept within that jurisdiction by the concluding clause of **Sec. 4 of the Act** of 1888, and hence no jurisdiction was given as to the other classes of cases which were excluded from such jurisdiction by the Act of 1888. The re-enacted section, in other words, instead of generally stating what was excluded from jurisdiction and then carving out exceptions, as was done in the Act of 1888, gave jurisdiction only in the cases where it was intended to give it, and then proceeded to declare that **in all other cases within the contemplation of the section there should be no jurisdiction, thus making the lines clear and broad and leaving no room for controversy or doubt.** Aside from this, it is to be moreover observed that the **intention of Congress to make by the adoption** of the Judicial Code so radical a change from the rule which had prevailed for so long a period **is not to be indulged in without a clear manifestation of such purpose.**

The correctness of this interpretation (that the Code of 1911 is to be considered frequently as a mere re-enactment of existing Acts) is borne out by a later decision from this Court, construing another Act embraced in the Judicial Code, to-wit, *Street & Smith, vs, Atlas. Mfg. Co.*, 231 U. S. 351, 353: 58 L. Ed. 263-4, where the Court, speaking by Mr. Justice Van Devanter, says, at p. 351:

> The Code does not purport to embody all the laws upon the subjects to which it relates. It contains some new provisions and some that are modifications of old ones; but much of it is merely a re-enactment of prior laws with appropriate regard to their proper classifications and orderly arrangement. Among others, it contains the following provisions bearing upon the extent to which it was intended to affect or repeal prior laws:

Then follows quotations from sections 292, 294, 297; and then the Justice calls attention to the fact that certain sections of the Code substantially, almost literally repeat the provisions of the Circuit Court of Appeals, Act of March 3, 1891, and continues further at p. 353:

> The provisions of the act upon this subject are not among those enumerated in § 297 of the Code as thereby repealed, and neither do they appear to have been embraced within and superseded by the Code. And while the circuit courts of appeals Act, to which § 18 of the act of 1905 makes reference, has been superseded by being incorporated into the Code, that section has not thereby lost any of its original effect, for § 292 of the Code requires the reference to be construed as if naming the very sections of the Code into which the circuit courts of appeals Act has been carried.

And Sec. 294 of the Judicial Code, reads:

> The provisions of this Act, so far as they are substantially the same as existing statutes, shall be construed as continuations of and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intention shall be clearly manifest.

With this clear and explicit statutory language and the line of previous decisions before it, we do not see how the Court could have reached any other conclusion than it did in *Hermann vs. Edwards*, but, we respectfully submit, it is not applicable to the case at Bar.

(b) **Citations of Herman vs. Edwards:** The only cases in which we can find *Hermann vs. Edwards* cited since, are: *Chesbrough vs. Woodworth*, 244 U. S. 78-9:61 L. Ed. 1005; *Toledo Fence & Post Co. vs. Lyons*, 290 F. (6 C. C. A.) 644; *Davis vs. McFarland*, 15 F. (2d), (C. C. A. Tex.) 613; *Fed. Reserve Bk. of Dallas vs. Webster*, 287 F. (D. C. Tex.)

586; *Wegman vs. Hulse*, 13 F. (2d), (D. C., W. D. N. Y.) 208.

A reference to these cases will show, we think, that the case has never been invoked as an authority for the purpose for which it is now used. In the Chesbrough case, the Court held that a question arising under a law of the United States was involved giving a Federal District Court jurisdiction **without regard to citizenship,** in an action to enforce the personal liability of directors of a National Bank under Acts of Congress, for damages suffered by one who had purchased capital stock in such bank in reliance upon false reports of the bank's financial condition to the Comptroller of the Currency, attested by them; and referring to the Hermann case, Mr. Justice McKenna, speaking for the Court, uses this language:

> Necessarily a Federal question is involved and there was jurisdiction in the courts below. Sec. 5198, Rev. Stat. (Comp. Stat. 1916, Sec. 9759); Sec. 4 of the Act of August 13, 1888, 25 Stat. at L. 436, Chap. 866, *Herman vs. Edwards*, 238 U. S. 107, 59 L. Ed. 1224, 35 Sup. Ct. 839, is not opposed to this view. It was there **held only that the Federal cause of action should be, in the absence of diverse citizenship, stated in the bill** to give the Federal Court jurisdiction—a condition that is complied with by the declaration in the present case.

Toledo Fence & Post Co. case was a suit by a Trustee in Bankruptcy, the court holding that where the Bankruptcy Act conferred on a Trustee the right to sue, such a suit arises under the Act and is within the jurisdiction given to Federal Courts, subject to the limitations imposed by the Act itself, the Court saying among other things:

> From this review we are compelled to think that, if there were no restrictive provisions in the Bankruptcy Act, the Federal Courts would have that measure of jurisdiction over suits by a trustee to recover

> debts due the bankrupt, which is given by section 24 of the Code as to suits arising under the laws of the United States.

And then speaking of the limitations and exceptions, says:

> For example, it has taken away by amendment to Sec. 24 (1), the power which that section formerly granted as construed in Pacific Railway Cases, * * *. Cases like *Hermann vs. Edwards*, 238 U. S. 107:59 L. Ed. 1224, are not inconsistent with, and indeed rather imply the idea that there would be Federal Court jurisdiction except for the restrictive provisions which such cases interpret and apply.

Davis vs. McFarland was a suit brought by a citizen of Texas against the directors of a Bank for violation of the Federal statute in making excessive loans, and it was held that the Court did not have jurisdiction where the plaintiff's share of alleged damage resulting from an excess loan amounted to less than $3,000.00, although the right asserted arose under a law of the United States. The Court, in referring to the Hermann case, simply stated:

> The Court did not have jurisdiction because a National Banking Association was a party sued.

Citing the Herman case and *Whittemore vs. Amoskeag Bank*, 134 U. S. 527:33 L. Ed. 102.

Federal Reserve Bank of Dallas vs. Webster, was a case involving the assignee clause of the Judiciary Act, very much like the Sowell case. The Court, in discussing the question of jurisdiction of suits that arise under the laws of the United States, at p. 584, says:

> This jurisdiction will not be held to be taken away by any subsequent words of the statute, although appropriate for the purpose, **unless it shall clearly appear that such was the manifest intent of Congress.**

And at p. 586 mentions the case of *Herman vs, Edwards,* quoting the very language which we have quoted (above at p. 11), from pp. 117-18 of the official report, L. Ed. p. 1229, and further stating:

> The meaning of the "assignee clause," as it existed in the original Judiciary Act and ever since and up to and including the Act of 1888, as judicially interpreted is too well settled to admit the possibility of a successful contention that the mere re-arrangement of it in the Judicial Code was designed by Congress to operate such a radical change in its meaning as contended for by the defendant.

Wegman vs. Hulse was a decision by the District Court for the Western District of New York, holding that such Courts had jurisdiction of suits by National Banks to enjoin the Comptroller or any Receiver from making an alleged collusive compromise of a suit against the Directors, and referring to the Hermann case the Court says:

> The case of *Hermann vs, Edwards,* * * * is not in point. Plainly no Federal question was involved. It was a suit brought by a stockholder of a National Bank against the Bank and another bank and its officers and directors, to recover for fraudulent sale of property by the first mentioned Bank to the latter.

(2) **Railroads.** By Act of January 28, 1915, 38 Stat. L., p. 804, Congress took from the Federal Courts jurisdiction of railroad corporations chartered by the United States in the following language:

> **No Court of the United States** shall have jurisdiction of any action or suit by or against any Railroad Company **upon the ground that said Railroad Company was incorporated under an Act of Congress.**

(3) **Federal Employers' Liability Act.** By the amendment to this Act in 1910, 36 Stat. L. 291, Ch. 143; U. S. C. Title 45, Sect. 56, Congress provided:

> The jurisdiction of the Courts of the United States under this Act shall be concurrent with that of the Courts of the several states, and **no case arising under this Act** and brought in any State Court of competent jurisdiction shall be removed to any Court of the United States.

(4) **All Corporations.** By Sec. 12 of the Act of 1925, 43 Stat. L. 941, U. S. C. Title 28, Sec. 42, it was provided:

> **No district court** shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: Provided, That **this section shall not apply** to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress **wherein the Government of the United States is the owner of more than one-half of its capital stock.**

4. **Acts ousting or taking away jurisdiction are to be strictly construed and should be clear and explicit.** This is demonstrated by the Acts of Congress which we have cited under (1-4) above at pages 8, 15; 16 of this argument, and by the cases which we have cited above, particularly the language quoted above at pages 5-6 from *American Bk. & Tr. Co. vs. Fed. Reserve Bk;* at p. 6-7 above from *Sowell vs. Fed. Res. Bk.;* at pp. 9-11 above from *Hermann vs. Edwards;* and at pp. 14-15 above from *Fed. Reserve Bank vs. Webster.* We add also Endlich on Interpretation of Statutes. Sec. 151. Sec. 155; *Davis vs. Slocum*, 263 U. S. 161:68 L. Ed. 228; *Emlenton Refining Co. vs. Chambers*, 14 F. (2d) (C. C. A., Pa.) 105; *U. S. vs. Barnes*, 222 U. S. 520:56 L. Ed. 293; *Anderson vs. Pac. Coast Steamship Co.*, 225 U. S. 198-9:56 L. Ed. 1052-3.

5. **Reason.** It is often said that we should not attempt to find a reason for a statute, but it is to be noted that the Courts constantly violate this rule in interpreting

statutes, and this is particularly true in the decisions from which we have quoted above (under 1, 2), at pages 5-6, 7, 11 of this argument.

Adopting, and to some extent paraphrasing the ideas expressed by this Court in some of these cases, the reasons for localizing National Banks owned by individuals and located to serve particular communities of larger or smaller size, do not apply to Federal Intermediate Credit Banks owned by the Government itself and serving a large territory embracing a number of states and a still larger number of United States Districts. A reasonable interpretation of the language of Sec. 201 (c), U. S. C. Title 12, Sec. 1023 ,would not limit and exclude the jurisdiction of the Federal Courts, belonging to the same Government which owned the bank. Indeed, it would be an anomaly if a government should establish, own and control an institution, and, as it were, take away from its own courts, (in many cases when most needed) jurisdiction to hear controversies concerning it. And adopting the sentiments in the Hermann case, "The intention of Congress to make * * * so radical a change from the rule which had prevailed for so long a period is not to be indulged in without a clear manifestation of such purpose."

The Federal Intermediate Credit Bank was and is a new experiment in the realm of banking in this country. It is intended to furnish credit to farmers with which to make crops. Because it was an experiment the Government itself ventured the investment of its own funds. There are only twelve of them, and we respectfully submit the intention to oust the Government's own Courts of jurisdiction is not to be presumed.

6. **Venue—Difference in Phraseology.** We submit the Intermediate Credit Bank Act uses the word **"jurisdiction"** in Section 201-(c) in the sense of **Venue** where it is a question of **locality** in which to sue or be sued. We call

attention here to the language of the Act of 1888 in regard to National Banks and the language of Sec. 24, sixteenth, of the Judicial Code, U. S. Title 28, Sect. 41, Subd. (16), which is omitted from the Federal Intermediate Credit Bank Act. This language is, **"for the purposes of all other actions by or against them."**

These words are, we think, significant, and would seem to cover, and to have been intended to cover, the entire field of jurisdiction. And the omission of these words from the Intermediate Credit Bank Act would certainly lend color to the suggestion that jurisdiction was not used in its broadest sense.

Its meaning is to be limited and interpreted by the words which follow, particularly **"citizen"** and **"located,"** and so limited means that when the question arises in what particular local Court (State or Federal) suit is to be brought by or against such banks, they are deemed **citizens** of the State where **located. And so limited it does not refer to or interfere with jurisdiction conferred by Judicial Code, Sect. 24, 1 a., U. S. Code Title 41 (1)** (a), **where the case arises under the Constitution or laws of the United States.**

It is important to know where the residence of a defendant is when it comes to the question of what Court of a State or of the United States he or she should or can sue or be sued in. Judicial Code, Sec. 51, U. S. C., Title 28, Sec. 112.

There are many cases that arise and will arise involving the questions of jurisdiction fixed or determinable under this provision of the Code, and we believe that it was important and necessary to locate a residence or home for these different Intermediate Credit Banks in order to meet the requirements of this section of the U. S. Code, *Macon Gro. Co. vs. A. C. L.*, 215 U. S. 501:54 L. Ed. 300; as also requirements of State laws.

This interpretation of the statute does no violence to it, and furnishes a sound reason for it. The interpretation adopted by the lower Courts is certainly not reconcilable with sound reason, and if it be the correct interpretation, then this statute has ousted jurisdiction in many cases without doing so in explicit language as has been the rule in all statutes heretofore on kindred subjects. And the Government has barred the door of its own Courts against its child in many cases where the child may most need this refuge.

II.

The Act of Feb. 13, 1925, 43 Stat. L. 936, purports to be "an Act to amend the Judicial Code, and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for other purposes." Its Section 12, now embodied in the Code, Title 28, Sec. 42, in clear and explicit language, takes from any District Court jurisdiction of any action against any corporation where it is founded on the ground that such corporation owes its existence to any Act of Congress. This is the culmination of the Acts taking away jurisdiction of the Federal Courts of corporations, which these Courts had under the Act of 1875. And it is contained in an amendment to the Judicial Code.

But the sweeping clause contained in the first portion of the paragraph is followed by a proviso expressly excepting from the provisions of the Act "any suit, action or proceeding brought by or against a corporation incorporated by or under an Act of Congress **wherein the Government of the United States is the owner of more than half of its capital stock.**" This proviso covers and embraces fully, clearly and explicitly our case.

It is further to be noted that this Section 12 of the amending Act is followed by Section 13, which after enumerating

numerous sections of the Judicial Code and Statutes (but not including Sec. 201-(c) of the Act of 1923) as repealed thereby, contains the sweeping clause: "All other Acts or parts of Acts in so far as they are embraced within a. superseded by this Act, or are inconsistent therewith." This is certainly wide enough to sweep out that portion of Section 201-(c) of the Act of 1923, which is inconsistent with it if interpreted as has been done by the Courts below in this case.

We are told by the learned Circuit Judge who wrote the opinion for the majority, that this act of 1925 and the Act of 1923, 201-(c), are both in our present Code, and this is true, and this shows an intent to leave both as the law. It is certain that the authors of the Code were conscious of the fact that it might not be entirely perfect when subsequently tried out; for it is provided in the enacting paragraph under Sec. 2-(a): "In case of any inconsistency arising through omission or otherwise between the provisions of any sections of this Code, and the corresponding portion of legislation heretofore enacted, effect shall be given for all purposes whatsoever to such enactments."

Giving to Sec. 201-(c) the construction for which we contend above under I, there is no real inconsistency between the two sections now embodied in one Code. With the highest regard for the writer of the opinion in C. C. A., we believe that opinion makes a marked inconsistency between the two acts and deprives the petitioner of a valuable right, which the proviso to Act of 1925 intended almost specifically for it.

With our construction we have a Government investing its own funds and property in its own creature, and leaving that creature for the most part with the privilege of entering its own Courts for protection or enforcement of its rights.

We have the **venue, habitat** or **citizenship** of that crea-

ture fixed for the purposes of knowing where to bring a suit by or against it.

Respectfully submitted,

R. H. WELCH,
RANDOLPH MURDAUGH,
D. W. ROBINSON,
Attorneys for Petitioner.

APPENDIX.

MATERIAL EXTRACTS FROM STATUTES.

1. National Bank Acts.

Act of 1882, 22 Stat. L. 162-3:

"the jurisdiction **for suits hereafter brought by or against** any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such national banking associations may be doing business when such suits may be begun."

Act of 1888, 25 Stat. L. 436:

"That all national banking associations established under the laws of the United States shall, for the purposes **of all other actions by or against them,** real, personal, or mixed, and all suits in equity, **be deemed citizens of the states** in which they are respectively located; and in such cases **the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state.** The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction ot any officer thereof, or cases for winding up the affairs of any such bank."

Judicial Code enacted 1911, Sec. 24, 16th, U. S. C. Title 28, Sect. 41, Subd. (16):

Of all cases commenced by the United States, or by direction of any officer thereof, against

any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, **for the purposes of all other actions by or against them,** real, personal, or mixed, and all suits in equity, **be deemed citizens of the States** in which they are respectively located. (See Sects. 49, 64).

2. Federal Intermediate Credit Bank Act.

Act of March 24, 1923, 42 Stat. L. 1454, Sec. 201 (c);

U. S. C. Title 12, Sect. 1023:

"Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of **jurisdiction** shall be deemed **a citizen of the State where** it is **located."**

42 Stat. L. 1457, U. S. C., Title 12, Sec. 1061:

"Amount; shares; subscription to by United States. For the purpose of exercising the powers conferred by this chapter, each Federal Intermediate Credit Bank shall have a subscribed capital stock of $5,000,000. Capital stock of such amount shall be divided into shares of $5 each and shall be subscribed, held, and paid by the Government of the United States. It shall be the duty of the Secretary of the Treasury to subscribe to such capital stock on behalf of the United States, such subscription to be subject to call in whole or in part by directors of the said banks upon thirty days' notice to the Secretary of the Treasury and with the approval of the Federal Farm Loan Board. The Secretary of the Treasury is authorized and directed to take out shares as called

and to pay for the same out of any money in the Treasury not otherwise appropriated. (March 4, 1923, c. 252, Title I, Par. 2, 42 Stat. 1457)."

3. Railroads.

Act of January 28, 1915, 38 Stat. L. 804 takes away jurisdiction in the following language:

> **"No court** of the United States **shall have jurisdiction of any action or suit by or against any Railroad Company upon the ground that said Railroad Company was incorporated under an Act of Congress."**

4. All Corporations.

Act of February 13, 1925, 43 Stat. L. 941, Sec. 12, U. S. C., Title 28, Sect. 42:

> (District Courts—Jurisdiction of actions against Federal corporations.) **That no district court shall have jurisdiction** of any action or suit **by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: Provided,** That this section shall **not apply** to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the **Government of the United States is the owner of more than one-half of its capital stock.**

Does not apply that, to ~~effect~~ the power of 201(c) is to be limited in respect of the "product"